

Action Plan for Improving State Policies for LGBTQ+ State Employees

Department of Human Resources

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INTRODUCTION: ESTABLISHING THE WORKGROUP

As Delaware's largest employer, the State of Delaware is committed to advancing a fair, diverse, equitable and inclusive workplace environment within State government. In January 2021, the Department of Human Resources (DHR) created a workgroup tasked with evaluating State policy and procedures related to LGBTQ+ (Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Others) populations. Members of the workgroup represent several DHR Divisions including the Office of Women's Advancement and Advocacy, Diversity and Inclusion, Talent Management, Training and Strategic Initiatives, and Statewide Benefits. The workgroup evaluated current policies using the [Gender Identity and Gender Expression Workplace Review Form](#), a tool developed by the [Human Rights Campaign](#), that helps to compare an organization's current policies to best practices identified through the [Corporate Equality Index](#). The committee also conducted interviews with DHR's Agency HR Leadership (Leads) to examine how current policies are experienced first-hand. The workgroup focused discussions on the following:

- Taking a more proactive approach to LGBTQ+ diversity and inclusion
- Sending signals to current and future employees that we are an inclusive work environment that values diversity
- Ways to expand beyond a respectful and inclusive workplace to a workplace where diverse lived experiences are encouraged and celebrated
- Identifying what data and feedback loop processes are needed to evaluate our work in this area

Based on the results of the workplace evaluation and the feedback from agency HR Leads, the committee developed an action plan to improve policies and procedures related to LGBTQ+ populations. While this workgroup focused on LGBTQ+ populations, the work of DHR is ongoing and continually strives to create a work environment that is inclusive, diverse, and representative of all Delawareans.

Background

The Human Rights Campaign (HRC) shares that "Human capital is often a company's most valuable asset and attracting and retaining the best talent is a mission-critical imperative in today's competitive landscape. Employers who value and embrace diversity through their policies and benefits signal their commitment to fundamental fairness to potential recruits, current employees, consumers and investors. Workplaces infused with cultural competency and awareness around diversity and inclusion across all categories – race, gender, ability, sexual orientation, gender identity, gender expression – not only solidify their commitment to fairness but build loyalty and productivity within their current ranks."ⁱ

The [HRC created a tool kit specific to HR professionals](#) which includes several recommendations for addressing common concerns of transgender and gender non-conforming employees. Not only should employers seek to create inclusive workplaces, but they have a duty to prohibit workplace discrimination. The Supreme Court affirmed in a 2020 decision that "discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second, therefore they are a protected class."ⁱⁱ

Delaware, both as a state and as an employer, has taken significant steps in working toward equality. For example, Delaware prohibits discrimination in employment, housing, and in public accommodations based on sexual orientation and gender identity. Delaware also has laws that address hate or bias crimes as well as harassment and/or bullying of students based on sexual orientation and gender identity as well as policies that facilitate gender marker updates on both driver's licenses and birth certificates. The Gender Identity Nondiscrimination Act of 2013 clarified that discrimination on the basis of gender identity is prohibited which resulted in the Guidelines on Equal Employment Opportunity and Affirmative Action Gender Identity Guidelines (Guidelines). Governor Carney's Executive Order (EO) #30 prohibits discrimination in State employment based on unlawful treatment of an individual on the basis of a person's protected class includes gender identity or expression. The EO directed the development and implementation of, [DHR's Respectful Workplace and Anti-Discrimination Policy](#) for State employees. This Policy explicitly includes sexual orientation, gender identity or expression as a protected class. With regards to transgender healthcare, Delaware has a ban on insurance exclusions for transgender healthcare and provides transgender-inclusive health benefits to State employees. All these policies illustrate Delaware's commitment to diversity and inclusion. However, there are additional steps the State could take as an employer to ensure an inclusive and equitable workplace where diverse lived experiences are encouraged and celebrated.

ACTION PLAN:

The evaluation completed by the committee showed that in many instances, the State is meeting best practices. However, several policies revealed room for improvement as well as the need for more support for implementing and following the policies. The committee discussed opportunities for how to better align current policies and procedures with best practice and ensure that supervisors, managers, Agency HR liaisons, and employees have the tools they need to support colleagues and create a welcoming and inclusive environment. The following action steps are based on the evaluation of current policy, discussion by the committee, and testimonials from Agency HR Leads that have direct experience with these policies.

- **Convert the guidelines to a formal Statewide Gender Identity Policy and Procedure** - The State's new [Gender Identity Policy and Procedure](#) document revised the guidelines to reflect the most recent best practices, updated resources for supervisors and employees, and added required training for employees of the Executive Branch.
- **Revise EEO Statement**- Based on the best practice of including gender identity and gender expression in the organization's Equal Employment Opportunity statement, the State's EEO statement has been revised to read, "The State of Delaware is an Equal Opportunity employer and values a diverse workforce. We strongly encourage and seek out a workforce representative of Delaware including race, color, religion, age, sex, national origin, disability status, genetics, protected veteran status, sexual orientation, gender identity or expression." The EEO statement will be added to relevant websites and shared with agencies as a model.
- **Allow Preferred Name and Pronouns**- Delaware is committed to ensuring the State's practices are inclusive across the workplace. Allowing the use of preferred names and pronouns wherever possible signals that the State is a welcoming environment and affords the greatest amount of

respect to all employees. Therefore, the committee is updating the State job application process to include both preferred name and pronouns as optional fields. The committee will also work to ensure that current employees and the customers we serve can utilize their preferred name and pronouns wherever legally permissible.

- **Require Training for Employees and Supervisors-** To increase cultural competency and create a respectful and accepting workplace, training should include definitions as well as scenarios illustrating non-discrimination policies related to gender identity and expression. The committee determined there is a need for additional training focused on gender identity and expression at all levels including as a new hire, regular refresher training for all employees, or more in-depth training for supervisor and managers. Several existing trainings in the Delaware Learning Center will become mandatory for the Executive Branch including all employees, supervisors, and managers. The committee will also continue to work on expanding training offerings as appropriate.
- **Provide Additional Resources-** Based on feedback from the Agency HR Leads, while the State has strong policies in place, more resources are needed for HR staff and supervisors to assist employees and address concerns. Policies have life after the policy is developed and employees should have what is needed to understand the policies. The committee will create practical materials that will help HR staff and supervisors understand and implement policies and procedures related to LGBTQ+ populations to create and maintain a welcoming and inclusive workplace where diverse lived experiences are encouraged and celebrated. A subcommittee with representatives from both DHR Leadership and Agency HR Leads has been identified to work on these materials.
- **Create Additional Metrics-** To meet the State's commitment to diversity and inclusion, it is necessary to capture metrics about the LGBTQ+ community (as well as other demographic data). Data collection forms that include employee race, ethnicity, gender, military, and disability status, should also include optional questions on sexual orientation and gender identity. The committee has identified metrics in need of updates and will work to institute the addition of gender identity/sexual orientation across all applicable metrics.

Conclusion

While the State has made much progress towards equity and inclusion, there remain a few areas for improvement related to LGBTQ+ populations. The committee supports this action plan and is prepared to mobilize. These action steps move the State closer to its commitment of a workforce that is inclusive, diverse, and representative of all Delawareans.

ⁱ The Human Rights Campaign. "Transgender Inclusion in the Workplace: A Toolkit for Employers" (2016). Retrieved from: <https://www.thehrcfoundation.org/professional-resources/trans-toolkit-for-employers>

ⁱⁱ The U.S. Equal Employment Opportunity Commission (EEOC). "What You Should Know: The EEOC and Protections for LGBT Workers" June 2020. Retrieved from: <https://www.eeoc.gov/laws/guidance/what-you-should-know-eeoc-and-protections-lgbt-workers>